

tissue gripping position or vise versa". Thus, the language clearly recites the equivalent of, "the first and second jaws of the tissue clamp assembly are moved between an open spaced apart position and closed tissue gripping position or between a closed tissue gripping position and an open spaced apart position," albeit substituting vise versa for the last 10 words. Thus, it is respectfully submitted that the use of the term "visa versa" is not indefinite.¹

In the Office Action of 12 March 2001, claim 43 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,483,562 to *Schoolman*. Claims 37 – 39, 41 and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,945,920 to *Clossick*.

In the Office Action of 9 March 2002, claims 37, 40 and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,483,562 to *Schoolman*. Claims 37 – 39, 41 and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,945,920 to *Clossick*.

On 20 March 2002, a Restriction Requirement was issued.

In the Office Action 5 July 2002, claims 37, 38, 39, 41 and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,318,528 to *Heaven et al.*, U.S. Patent No. 5,336,221 to *Anderson*, U.S. Patent No. 4,945,920 to *Clossick* or U.S. Patent No. 5,254,130 to *Poncet et al.*

Now the Patent Office applies four new references: U.S. Patent No. 5,871,496 to *Ginn et al.*; U.S. Patent No. 5,749,889 to *Bacich et al.*; U.S. Patent No. 3,915,169 to *McGuire*; and U.S. Patent No. 5,782,834 to *Lucey et al.* Initially, claims 37 - 39, 41 and 42 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,871,496 to *Ginn et al.* or U.S. Patent No. 5,749,889 to *Bacich et al.*

U.S. Patent No. 5,871,496 to *Ginn et al.* describes a surgical instrument specifically designed for a procedure of detaching an internal mammary artery (IMA) and the like, from the

¹ In the event that this case is in a position for allowance and this is the sole remaining issue, the Examiner is invited to substitute the 10 words for "vise versa" in an Examiner's amendment in order to expedite prosecution.

connecting tissues and side branch vessels which surround the artery in its native location. This detaching procedure is preliminary to the performing of a coronary artery bypass grafting procedure. An elongated slender rod includes a handle at its proximal end and an artery engaging loop, arc, fork configuration, or hook at its distal working end. Thus, the surgical instrument of Ginn et al. "captures and gently stabilizes IMA" (column 8 ,line 41) so that a separate instrument such as a surgical scissors 22 (figure 3) or a electro-surgical knife 148 (figure 13) can do its job. Thus, it is not seen where the introducer of *Ginn et al* describes, teaches or discloses the present invention. Where is the tissue clamp assembly? Where is the handle assembly with movable arms U.S. Patent No. 5,749,889 to *Bacich et al.* describes a surgical introducer for endoscopic surgeries comprising surgical cutting procedures. The device includes a distal insertion portion 102 for insertion into a patient and a proximal housing 104. The device includes a substantially rigid first channel associated with a first port and a second channel associated with a second port of the proximal housing. The two channels receive secondary instruments such as an endoscope 110 and a grasper 163. The first channel extends to a curved distal end of the device, and the second channel is connected to a guide channel extending tangential to the main channel.

The guide channel comprises substantially noncompliant material and has a pre-insertion position such that a cross-section of an inserted portion of the device is substantially the same as a cross-section of the main channel. This is seen in figure 3, where the guide channel is draped over the main channel, compared to figure 4, where the cross section of the secondary instrument is seen inside the now expanded guide channel. Thus, it is not seen where the introducer of *Bacich et al* describes, teaches or discloses the present invention. Where is the malleable shaft? Where is the tissue clamp assembly? Where is the handle assembly with movable arms?

Recognizing the deficiencies of *Ginn et al.* and *Bacich et al.*, the Office Action attempts to combine these references with yet another reference under 35 U.S.C. § 103: U.S. Patent No. 3,915,169 to *McGuire* describes a surgical knife for removing meniscus from human knee joints. The knife has a malleable shaft portion so the surgeon can direct the knife to the desired path of incision. "[The] blade is preferably formed of spring steel so that it can flex and thus form a hinge joint in the shank. A wire 8 extends between the blade 20 and a trigger 2 on the handle portion 1 of the knife. Thus, the angle of the blade can be varied by the surgeon between the

positions seen, for example, in figure 2 and figure 5. Thus, it is not seen where the knife of *McGuire* salvages the deficiencies of *Ginn et al.* and *Bacich et al.* Where is the tissue clamp assembly? Where is the handle assembly with movable arms? Would the combined device of *McGuire* and *Ginn et al.* “capture and gently stabilize” or cut the tissue? How would using the introducer of *Bacich et al* with the knife of *McGuire* describes, teaches or discloses the present invention?

Finally, claims 37 - 39, 41 and 42 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,782,834 to *Lucey et al.* U.S. Patent No. 5,782,834 to *Lucey et al.* describes a surgical instrument in which a surgical tool 12 is carried distally of a bend region 20 in an outer stationary tube 14. A mounting assembly 22 transmits proximally applied forces through the bend region to both operate the surgical tool and selectively change the rotational orientation of the surgical tool with respect to the stationary member. The mounting assembly includes a pair of coaxial tubes 32, 34 disposed within outer stationary tube 14. Intermediate tube 32 is disposed between outer stationary tube 14 and innermost tube 34, and carries the surgical tool. “The portion of the tubes 32, 34 that lie within the bend region 20 [of the outer stationary tube] are flexible to allow tubes 32, 34 to both accommodate themselves to the curvature imposed by bend region 20 without becoming unduly stressed, and to transmit the applied rotational and axial forces through (i.e., beyond) bend region to surgical tool. (Column 5, lines 48 – 53).

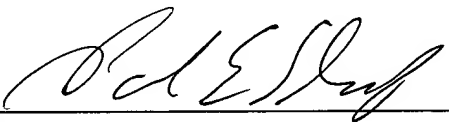
The Office Action argues that “the segment 40 of Lucey, et al as a substructure of the total device clearly anticipates the claim [37] as broadly worded.” This refers to the “flexible region 40 disposed slightly proximally of distal end 42” of intermediate tube 32 seen in figure 3. (Column 5, lines 54 – 56). This flexible region 40 is formed by a series of circumferential slots 44 formed in the walls 48 of tube 32 flexible region 40 to provide uniform flexibility and avoid any substantial deviations in flexibility as tube 32 is rotated within stationary tube 14. Thus, it is not seen where the flexible, inner tube of *Lucey, et al* describes, teaches or discloses the present invention. Where is the malleable shaft? Where is the tissue clamp assembly? Where is the handle assembly with movable arms?

Thus, it is seen that U.S. Patent No. 5,871,496 to *Ginn et al.*; U.S. Patent No. 5,749,889 to *Bacich et al.*; U.S. Patent No. 3,915,169 to *McGuire*; and U.S. Patent No. 5,782,834 to *Lucey et al.* fall into the same scrap pile as U.S. Patent No. 4,483,562 to *Schoolman*; U.S. Patent No. 4,945,920 to *Clossick*; U.S. Patent No. 5,318,528 to *Heaven et al.*, U.S. Patent No. 5,336,221 to *Anderson*, and U.S. Patent No. 5,254,130 to *Poncet et al.*

The Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

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